No. 6406

United States Circuit Court of Appeals

For the Ninth Circuit

PAUL HERRMANN,
Appellant,

vs.

NEW YORK LIFE INSURANCE COMPANY,
Appellee.

Appellee's Brief

Upon Appeal from the United States District Court for the District of Oregon
HON. R. S. BEAN, JUDGE

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STATEMENT

Appellant, a resident of Heidelberg, Germany, brought this action as alleged assignee of four insurance policies issued prior to 1914 by appellee in Germany, payable in Germany, and in German marks.

Each of the insured was, at the time his policy was issued, a German resident and subject, and has since resided in that country (Trans. R. 201).

The first cause of action alleges that there accrued and became payable on the policy an endowment sum of 9,000 marks and certain stated sums as profits or accumulated dividends, payment of which was demanded and by appellee refused.

The second cause of action is similar to the first except as to the amounts of the endowment and the accumulated dividends.

The third cause of action, as alleged, is on a matured policy calling for 25,500 marks.

The fourth cause of action, as alleged, is on a matured policy calling for 600 marks.

Counsel for appellant seem to make some point that the causes of action are not based upon the insurance contracts, because it is remarked, on page 4 of Appellant's Brief, in substance, that the defendant repudiated the contracts and refused to be bound thereby and because of such repudiation the plaintiff is seeking damages in American dollars.

However, on the same page it is said that:

> "The first cause of action arises out of Exhibit A, a 20-year endowment policy issued to Ludwig Schnell," etc.; and

"The second cause of action arises out of a 20-year endowment policy issued on July 12, 1902, to Martin Loeb," etc.; and

"The third cause of action arises out of a 20-year endowment life insurance policy issued by defendant to Hermann Kaiser-Bluth," etc.; and

"The fourth cause of action arises out of a 25-year endowment life insurance policy issued to Wilhelm Stadelmeyer," etc.

Obviously, if no insurance pilicies had been issued there would be no foundation for any claims against the appellee, and of necessity the claims are based on the policies.

In *Die Deutsche Bank v. Humphrey,* 272 U. S. 517, 519, 71 L. Ed. 283, 385, the Court had before it a German mark obligation, and among other things said:

"A suit in this country is based upon an obligation existing under the foreign law at the time when the suit is brought, and the obligation is not enlarged by the fact that the creditor happens to be able to catch his debtor here. *Davis v. Mills,* 194 U. S. 451; 48 L. Ed. 1067; 24 Sup. Ct. Rep. 692. See *Western U. Teleg. Co. v. Brown,* 234 U. S. 542; 58 L. Ed. 1457; 34 Sup. Ct. Rep. 955; 5 N. C. C. A. 1024. We may assume that when the bank failed to pay on demand its liability was fixed at a certain number of marks both by the terms of the contract and by the German law — but we also assume that it was fixed in marks only, not at the extrinsic value that those

> marks then had in commodities or in the currency of another country. On the contrary, we repeat, it was and continued to be a liability in marks alone and was open to satisfaction by the payment of that number of marks, at any time, with whatever interest might have accrued, however much the mark might have fallen in value as compared with other things. See *Societe des Hotels le Touquet Paris-Plage v. Cummings* (1922), 1 K. B. 451 - C. A."

The defenses interposed to these several causes of action are similar to those in the companion case of *Heine versus New York Life Insurance Company,* No. 6405, on the docket of this court (Trans. R. 33, et seq.).

Appellant, as pointed out in the transcript and brief in the Heine case, has been very active in promoting litigation in the American courts on German insurance policies. So far as the record shows he has never been a policyholder in the appellee or any other American company, but has been a sort of miscellaneous assignee of German insurance claims, representation of which he has obtained. He has now pending in the Federal and State Courts in Oregon, brought by him as assignee, cases involving some 227 German policies.

The similar motion was made to dismiss this case as was made in the Heine case, supra. It was based on the same affidavits (Trans. R. 218), and the additional affidavit of Mr. Walker Buckner, in which he describes the policies, the circumstances under which, the

place where, and the German officers of appellee by whom, they were issued (Trans. R. 201).

The venue stipulations in the policies in this case are phrased somewhat differently than those in the policies in the Heine case (Trans. R. 203). However, the discussion of these venue sitpulations in insurance policies by Dr. Burchard in his affidavit filed in the Heine case, and the authorities which he there cites, apply to these venus stipulations equally with those involved in the Heine case (Heine, Trans. Rec. 206, et seq.).

We agree with counsel for appellant that the questions involved in this case are essentially like those involved in the Heine case, and for that reason we refer to, and submit this cause on, the brief of appellee filed in the Heine case.

Respectfully submitted,

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